NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

CM Office Services, Inc., CM Services Group, Inc., CM Contractors, Inc., CM Contractors Services, Inc., CM Leasing Services, Inc., a single employer and/or alter ego and Operative Plasterers' and Cement Masons' International Association Local No. 132, AFL–CIO. Case 9–CA–39087

February 5, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Operative Plasterers' and Cement Masons' International Association Local No. 132, AFL–CIO (the Union), on February 15 and September 9, 2002, respectively, the General Counsel issued the complaint on September 12, 2002, against CM Office Services, Inc., CM Services Group, Inc., CM Contractors, Inc., CM Contractors Services, Inc., and CM Leasing Services, Inc., a single employer and/or alter ego (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On October 24, 2002, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support with the Board. On October 25, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.[1] Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 3, 2002, notified the Respondent that unless an answer were received by October 16, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, CM Office Services, Inc., a corporation, and CM Contractors, Inc., a corporation, have been engaged in commercial construction in Columbus, Ohio. At all material times, CM Services Group, Inc., a corporation, has been engaged as a general contractor in the construction industry in Columbus, Ohio. At all material times, CM Contractors Services, Inc., a corporation, and CM Leasing Services, Inc., a corporation, have been engaged in providing a labor pool in Columbus, Ohio.

At all material times, CM Office Services, Inc., CM Service Group, Inc., CM Contractors, Inc., CM Contractors Services, Inc., and CM Leasing Services, Inc., have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations in areas of insurance, phone, purchasing, accounting, bookkeeping, banking, and maintenance; have intermingled finances with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on the operations described above, CM Office Services, Inc., CM Services Group, Inc., CM Contractors, Inc., CM Contractors Services, Inc., and CM Leasing Services, Inc., collectively called the Respondent, have been a single-integrated business enterprise and a single employer and/or alter ego within the meaning of the Act.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations described above, performed services valued in excess of $50,000 for enterprises within the State of Ohio, each of which, in turn, satisfies the Board's direct jurisdictional standards on an annual basis.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and

[1] The copy of the complaint served on the Respondent by regular and certified mail, was subsequently returned by the postal service marked as "unclaimed." The Respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

(7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of Respondent engaged in the finishing of concrete construction, including the foremanship of same such as buildings, bridges, silos, elevators, smoke stacks, curbs and gutters, sidewalks, streets and roads, paving alleys and roofs, of mass or reinforced concrete slab and all flat surfaces of cement, rock asphalt, and laying and spreading and finishing of all types of bituminous concrete, whether laid free hand or in precast form on the job, including all types of asphalt floors and pavements, the operation of all power driven floats, troweling machines, vibrating screeds and the operation of laser screed machines.

About August 7, 2000, the Respondent, through CM Contractors, Inc., agreed to be bound by the collective-bargaining agreement between the Union and the Central Ohio AGC, AGC of Ohio, Associated General Contractors of America, Inc. (the Association), and agreed to be bound to such future agreements between the Association and the Union, unless timely notice was given to cancel or modify said agreement.

The Respondent, an employer in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining contracts, the most recent of which is effective, having automatically renewed, through May 31, 2003.

For the period from August 7, 2000, when the Respondent recognized the Union, to May 31, 2003, when the automatically renewed contract expires, based on Section 9(a) of the Act, the Union has been and is the limited exclusive collective-bargaining representative of the unit.

Since about August 16, 2001, and continuing thereafter, the Respondent has failed and refused to pay the wages and fringe benefits required by the contract described above.

About September 6, 2001, the Respondent repudiated the collective-bargaining agreement described above, between the Association and the Union to which the Respondent is bound.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to pay contractually required earnings and other benefits to the unit employees since August 16, 2001, and by repudiating the above-described collective-bargaining agreement with the Union since September 6, 2001, we shall order the Respondent to honor the terms and conditions of the collective-bargaining agreement expiring on May 31, 2003, and any automatic renewal or extension of it. In addition, we shall order the Respondent to make whole the unit employees for any loss of earnings or benefits they may have suffered as a result of the Respondent's failure to pay contractually required wages and fringe benefits since August 16, 2001. In order to remedy the Respondent's failure to make contractually required fringe benefit payments, the Respondent shall be required to make all contractually required benefit payments or contributions that have not been made since August 16, 2001, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, CM Office Services, Inc., CM Services Group, Inc., CM Contractors, Inc., CM Contractors Services, Inc., and CM Leasing Services, Inc., a single employer and/or alter ego, Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with the terms of its collective-bargaining agreement expiring on May 31, 2003, and any automatic renewal or extension of it, with Operative Plasterers' and Cement Masons' International Association Local No. 132, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit, by failing and refusing to pay contractually required wages and fringe benefits and by repudiating the agreement. The unit is:

> All employees of Respondent engaged in the finishing of concrete construction, including the foremanship of same such as buildings, bridges, silos, elevators, smoke stacks, curbs and gutters, sidewalks, streets and roads, paving alleys and roofs, of mass or reinforced concrete slab and all flat surfaces of cement, rock asphalt, and laying and spreading and finishing of all types of bituminous concrete, whether laid free hand or in precast form on the job, including all types of asphalt floors and pavements, the operation of all power driven floats, troweling machines, vibrating screeds and the operation of laser screed machines.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the collective-bargaining agreement described above during the term of the agreement and any automatic renewal or extension of it, including by paying contractually required wages and fringe benefits.

(b) Make whole, with interest, the unit employees for any loss of wages and other benefits they may have suffered as a result of its failure to abide by the agreement, and any automatic renewal or extension of it, since August 16, 2001, as set forth in the remedy section of this decision.

(c) Make all contractually required fringe benefit fund contributions, if any, that have not been made on behalf of unit employees since August 16, 2001, and reimburse unit employees for expenses ensuing from its failure to make the required payments in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Columbus, Ohio, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 16, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., February 5, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

R. Alexander Acosta, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to comply with the terms of our collective-bargaining agreement expiring on May 31, 2003, and any automatic renewal or extension of it, with Operative Plasterers' and Cement Masons' International Association Local No. 132, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following unit, by failing and refusing to pay contractually required wages and fringe benefits and by repudiating the agreement. The unit is:

> All of our employees engaged in the finishing of concrete construction, including the foremanship of same such as buildings, bridges, silos, elevators, smoke stacks, curbs and gutters, sidewalks, streets and roads, paving alleys and roofs, of mass or reinforced concrete slab and all flat surfaces of cement, rock asphalt, and laying and spreading and finishing of all types of bituminous concrete, whether laid free hand or in precast form on the job, including floors and pavements, the operation of all power driven floats, troweling machines, vibrating screeds and the operation of laser screed machines.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the collective-bargaining agreement described above during the term of the agreement and any automatic renewal or extension of it, including by paying contractually required wages and fringe benefits.

WE WILL make whole, with interest, the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure, since August 16, 2001, to abide by the agreement and any automatic renewal or extension of it.

WE WILL make all contractually required fringe benefit fund contributions, if any, that have not been made on behalf of unit employees since August 16, 2001, and reimburse unit employees for expenses ensuing from its failure to make the required payments with interest.

CM OFFICE SERVICES, INC., CM SERVICES GROUP, INC., CM CONTRACTORS, INC., CM CONTRACTORS SERVICES, INC., CM LEASING SERVICES, INC., A SINGLE EMPLOYER AND/OR ALTER EGO